

**United States Department of Labor
Employees' Compensation Appeals Board**

P.M., Appellant)	
)	
and)	Docket No. 09-121
)	Issued: August 13, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant, through her representative, filed a timely appeal from the July 2, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board also has jurisdiction to review the Office's September 29, 2008 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of temporary total disability on June 10, 2008 when limited duty was no longer available; and if so, (2) whether the Office properly denied her July 10, 2008 request for reconsideration.

FACTUAL HISTORY

On or about November 16, 2004, appellant, then a 60-year-old mail processor, filed a claim alleging that she developed carpal tunnel syndrome in the performance of her duties. She stopped work that day. The Office accepted appellant's claim for bilateral carpal tunnel

syndrome.¹ It paid compensation for temporary total disability through December 18, 2004. Appellant returned to full-time limited duty on December 21, 2004. On November 6, 2006 the Office issued a schedule award for a 26 percent permanent impairment of both upper extremities. The period of the award ran from September 5, 2006 to October 14, 2009.

On June 13, 2008 appellant filed a claim for compensation for six and a half hours' wage loss on June 10, 2008. Her supervisor indicated on a time analysis form that there was no work available within her limitations.

In a decision dated July 2, 2008, the Office denied appellant's claim for wage-loss compensation. It noted that while schedule awards may be paid after an employee returns to work, an employee may not receive wage-loss compensation and schedule award benefits concurrently for the same injury. Because the period of the November 6, 2006 schedule award overlapped with the claimed date of wage loss, the Office found that appellant was not entitled to any wage-loss compensation for June 10, 2008.

On July 10, 2008 appellant, through her representative, requested reconsideration. She noted that the only basis given for denying her claim was that she was currently receiving schedule award benefits. Appellant argued that the Office should interrupt the award and pay wage-loss compensation for the various periods triggered by the withdrawal of modified work.

In a decision dated September 29, 2008, the Office denied appellant's request for reconsideration. It found that appellant's argument -- that the schedule award should be interrupted to pay wage-loss compensation for the claimed recurrence -- lacked a reasonable color of validity and did not warrant a merit review of the case. Although Office procedures allowed for the interruption of a schedule award "to be paid" when a recurrence of disability is accepted, the Office noted no provision to retroactively interrupt a schedule award.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² If there is permanent physical impairment involving the loss or loss of use of a member or function of the body or involving disfigurement, the employee is entitled to a schedule award.³

An employee cannot concurrently receive compensation under a schedule award and compensation for disability for work, on the theory that these are parallel remedies for the same injury.⁴ But Office procedures state that if a recurrence is accepted for a period which overlaps a schedule award, it will be necessary to interrupt the schedule in order to pay for the period of recurrence. And if a recurrent pay rate is established, the claimant will be entitled to that rate for

¹ The Office later expanded its acceptance to include acceleration of degenerative arthritis in both hands.

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8107.

⁴ *Marie J. Born*, 27 ECAB 623, 628-29 (1976).

the balance of the schedule award after the period of disability attributable to the recurrence has ceased.⁵

ANALYSIS -- ISSUE 1

The Office denied appellant's claim for wage-loss compensation on the grounds that an employee may not receive wage-loss compensation and schedule award benefits concurrently for the same injury. However, Office procedures provide that if a recurrence of disability is accepted for a period that overlaps a schedule award, as might be the case if no work was available within appellant's limitations on June 10, 2008, then it will be necessary for the Office to interrupt the schedule award in order to pay wage loss for a recurrence. In this way, Office procedures allow a claimant to receive compensation for wage loss and compensation under a schedule award without violating the prohibition on concurrent receipt.

So the basis upon which the Office denied appellant's June 13, 2008 claim for wage loss is not sufficient. The Board will set aside its July 2, 2008 decision and remand the case for such further development as may be necessary and for findings to support an appropriate merit decision on appellant's claim of wage loss. Because the Board is remanding the case to the Office for a merit review, the issue presented by the Office's September 29, 2008 decision denying reconsideration is moot.

CONCLUSION

The Board finds that this case is not in posture for decision. The Office denied appellant's claim of wage loss without sufficient findings.⁶ Further action is therefore warranted.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.7.a(3) (November 1998).

⁶ See e.g., *Ernesto L. Montoya*, 35 ECAB 205 (1983); see also 20 C.F.R. § 10.126; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.2c (March 1997).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: August 13, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board